

MICHAEL FOGLE,)
)
Plaintiff,)
)
v.) No. 4:07CV1090 SNL
)
ALAN BLAKE,)
)
Defendant.)

This matter is before the Court upon the motion of Michael Fogle for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a civilly-committed sexually violent predator, brings this action under 42 U.S.C. § 1983. Named as defendant is Alan Blake, Director of the Missouri Sexual Offender Treatment Center (MSOTC). Plaintiff seeks monetary and injunctive relief.

Plaintiff alleges that he is routinely shackled with hand and leg restraints when he is transported from MSOTC to outside facilities. Plaintiff claims that defendant Blake is responsible because the persons who shackled him are his subordinates.

The complaint fails to state a claim under 42 U.S.C. § 1983 because the allegations do not rise to the level of a constitutional violation. Additionally, the complaint fails to state a claim against Blake because there is no respondeat superior

liability under § 1983. E.g., Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995).

Consequently, the complaint shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate order of dismissal shall accompany this Memorandum and Order.

Dated this 3rd day of October, 2007.

A handwritten signature in cursive script, reading "Stephen L. Limbaugh". The signature is written in dark ink and is positioned above a horizontal line.

SENIOR UNITED STATES DISTRICT JUDGE